

MANAGING CHALLENGING BEHAVIOUR

(i) Outline for a policy:

- The purpose of the policy, its scope and definitions of work-related violence, including the recognition that it is a health and safety issue.
- Indication of commitment from management and support for staff actions that aim to create an environment free from violence.
- A statement that violence will not be tolerated, that it is unacceptable and that it does not show failure of staff if it occurs.
- Information on procedures for working with other agencies, e.g. the police, social work, psychological services etc.
- Responsibilities for implementing the policy and procedures. What action will be taken if staff or managers do not use the policies and procedures?
- Assessing the risks of work-related violence and where risk assessments are located.
- Details of measures aimed at preventing, controlling and eliminating violence including environmental design, job design and training.
- Specific policies on aspects which are more likely to cause conflict and violence.
- What reporting and recording systems we have in place and when staff should use them.
- The actions staff and managers should take if a violent incident occurs. Staff should know how to deal with it, how to support other staff members involved in incidents, and what support is available.
- Clear mechanisms to inform staff of actions taken by managers.
- Information about arrangements for consultation, monitoring and review of the policy, as well as how the policy will be communicated to staff.

Violence to Staff in the Education Sector (1997) (Education Service Advisory Committee) (Appendix 2 -attached) will provide the basis for this policy and its regular reviews. This will be complemented by the Health and Safety Executive's wider advice.

(ii) Background:

Children in Scotland have the right, arising from the Education (Scotland) Act 1980, to be educated and, unless excluded from a school, have a right to receive their education from the school with which they are enrolled. If certain pupils were refused admittance to classes, such pupils would have a possible claim against the Council for denying them the right to an education. The Council may also be open to a claim

under the Human Rights Act with regard to their right to be educated (Article 2 of Protocol).

A teacher's contract with an employer defines the employment law perspective. The contractual requirement is set out in the SNCT Handbook Part 2 paragraph 2.8, which states:

“2.8 Subject to the policies and practice of the school and the Council, the duties of teachers are to:

(a) manage and organise classes through planning and preparing for teaching and learning.”

A teacher who refuses to admit a persistently disruptive pupil would, in effect, be refusing to comply with her or his contractual terms.

In terms of the employment contract the teacher who refuses to admit a disruptive pupil could be subject to disciplinary action.

Argyll and Bute Council has a duty to protect the health and safety of their employees. Councils also have a duty to protect the health and safety of other pupils in a class, and where there is a threat of physical violence, a risk assessment should be carried out by an appropriate member of staff identified by the establishment's Head Teacher and, based on its results, a case to refuse admittance may be made.

The right to exclude a pupil from a school derives from Regulation 4 of the Schools General (Scotland) Regulations 1975 as amended. The right to exclude is devolved to Head Teachers by Argyll and Bute. The Headteacher has the legal right to exclude within the context of council procedures. It should be noted however that exclusion of some pupils may involve consultation with other professionals or with outside agencies such as social work. This will particularly be the case when the pupil has additional support needs, is looked after by the Council or in situations where there are child protection issues.

Argyll and Bute's clear policy is that wherever possible pupils should be taught within a school in their community. In order to make this possible Argyll and Bute will, where appropriate, provide a range of strategies that may include:

- Additional support wherever this is needed;
- Additional staffing for in-school behaviour bases and units;
- The provision of additional off site behaviour facilities on a temporary basis;
- A reduction in class sizes to support better behaviour and improved discipline in the classroom;
- The provision of support, in matters relating to better behaviour/discipline strategies, for teachers in their induction year, and
- The provision of appropriate CPD relating to better behaviour/ discipline strategies for teachers throughout their careers.

Each school should develop a policy in accordance with the broader inclusion policy and will include the following:-

- The application of curriculum flexibility to bring benefits to all pupils;
- Establishing clear links between effective teaching and learning and effective behaviour management;
- Ensuring that there is prompt and appropriate access to a carefully – balanced range of specialist provision and support for schools. This should, as appropriate, include specialist behaviour support staff, on-site support bases or sufficient, appropriate off-site provision;
- An indication of the criteria for exclusion and re-affirmation of the right of Head Teachers to use exclusion where appropriate;
- Ensuring effective systems for the dissemination of good practice within the school and to the wider Authority, and
- Making available high quality professional staff development on learning and teaching and behaviour management, both to teaching and support staff. An annual menu of CPD provision on behaviour management should be made available to teachers. Such CPD should include opportunities for courses organised by colleagues in partner agencies as well as within the school/ local cluster.

Within staffing and other resource limitations, a professional dialogue between head teachers and teachers may result in a pupil being withdrawn from certain classes or from aspects of the curriculum. Such decisions will arise in circumstances where the pupil persistently disrupts in certain classes or in aspects of the curriculum whilst being offered additional support. Such decisions will be taken on a pragmatic, *ad hoc* basis and is likely to be more manageable where on-site provision is available.

The teacher has no right to refuse to admit a pupil but will have the right to seek to refuse to do so although this would be qualified by the overall decision of a Head Teacher operating within Council policies.

(iii) Violent Incidents in Schools

Definition

The Health and Safety Executive defines violence at work as:

“Any incident in which a person is abused, threatened or assaulted in circumstances relating to their work. This can include verbal abuse or threats as well as physical attacks.”

This definition will also cover written forms of abuse as well as sexual and racial harassment.

The Health and Safety Executive’s advice covers a number of areas which will be included in the policy –

- (a) Defining violence and violent incidents
- (b) Assessing risk factors
- (c) Developing an action plan to include
 - (i) Security of the physical environment
 - (ii) Work practices (eg remote buildings, evening work etc)
 - (iii) Physical aspects of the building
 - (iv) Staff training
- (d) Reporting and recording incidents
- (e) Supporting victims.

Legal Rights and Teacher Responsibility

All staff are entitled to rely on the protection provided by a number of statutory provisions.

The Health and Safety at Work etc Act 1974 places employers under a duty to ensure, as far as is reasonably practicable, the health, safety and welfare of employees at work. This duty includes protecting employees from violent incidents and reducing the risks of such incidents occurring.

The Safety Committee and Safety Representative Regulations 1977 requires employers to inform Safety Representatives in good time on matters related to the health and safety of their members and to consult with them. Safety Representatives have the right to investigate violent incidents, carry out safety inspections and to investigate potential hazards. Violence to staff and the development of procedures and policies should all be matters which are considered by Safety Committees within Argyll and Bute schools.

Under the Management of Health and Safety at Work Regulations 1999 employers must assess risks to employees and make arrangements for their health and safety by effective planning, organisation, control, monitoring and review. This includes protecting employees from the risk of violence. It is important that individual employees are consulted as part of the risk assessment process and that Safety Representatives are consulted on risk assessment processes, procedures and findings.

Injuries which are a result of workplace violence are reportable in the same way as those caused by accidents. The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (as amended) (RIDDOR) 2013 requires employers to report any act of violence which leads to incapacity for more than **seven** consecutive days to the Health and Safety Executive. **However, under EU law, employers and others with responsibilities under RIDDOR (2013) must still keep a record of all over three day injuries.** All such incidents should be recorded as per Argyll and Bute policies and all incidents of physical violence must be reported to the police – this does not preclude the reporting of non-physical abuse.

The employee who is the victim has the right to report the matter to the police and will be fully supported by School Management.

Where a pupil or student commits an act of violence against a member of staff the head teacher must make reference to the A&B Exclusion policy when determining a suitable outcome

During the period of exclusion there should be full consultation with the staff on the pupil or student's future in the establishment. The views of the victim should be taken into account. Risk assessments should also be carried out.

(iv) Physical Restraint Techniques

There can be no requirement for teachers to be trained in physical restraint techniques.

Such training should be voluntary. However, we would accept that there may be circumstances when training in de-escalation techniques may be appropriate.

Where young children exhibit violent behaviour or pose a threat of violence, identified through a risk assessment procedure, the most appropriate recommendation is followed

Any physical intervention should be as a last resort and action should be the minimum required in the circumstances to prevent a young person harming herself/himself, others or the member and should only be considered following other measures to defuse the situation, following, wherever possible, the summoning of assistance and, wherever possible, following a clear warning.

(v) Risk Assessments

The Health and Safety Executive (HSE) provides a general definition of what a risk assessment is:

“A risk assessment is simply a careful examination of what, in your work, could cause harm to people, so that you can weigh up whether you have taken enough precautions or should do more to prevent harm.”

A risk assessment can also look at a specific hazard or risk in a particular situation. Rare though it is in Argyll and Bute schools the risk from violent and abusive behaviours can be a significant problem and it is important that such risks are properly assessed. It may not be possible or appropriate to exclude a pupil at the first sign of violent or abusive behaviours, therefore, it is essential that the extent of the risk is properly assessed and suitable control measures, precautions, procedures and training are provided.

The risk is assessed by consideration of the likelihood that the potential harm will occur and the severity of the possible consequences. The success of a risk assessment is judged on whether or not the risks, following assessment and implementation of measures for prevention, are adequately controlled. To undertake

this requirement it is important that the process of risk assessment is rigorous and that staff are consulted at all stages.

Compliance with Legal Requirements

Under the Health and Safety at Work etc Act 1974 an employer has a duty to ensure the health, safety and welfare of his/her employees. The specific requirements for risk assessment arise from the Management of Health and Safety at Work Regulations 1999. The process outlined in this guidance and the pro-forma provided in the guidance 'Managing Challenging Behaviour in Education'.

Risk assessments must be recorded. The risk assessment formats used for general risks, which may also include the risk of violence from the public or parents, is not always suitable when assessing violent or abusive behaviours from specific children or young people.

Where an employee's circumstances change the employer should reconsider the risk assessment, in particular where an employee becomes pregnant, develops a disability or returns to work from major surgery. This is of particular importance if the teacher is dealing with situations where she/he is at risk from violent and abusive behaviours. Once an employer has been informed by the employee that she is pregnant it is a legal requirement that a specific risk assessment is carried out and that this assessment should consider the risks to the unborn child. The risk assessment should consider all risks including risks from violent and abusive behaviours.

The Safety Representatives and Safety Committees Regulations 1977 require employers to consult with trade union safety representatives on matters concerning the health or safety of their members. This requirement includes consultation on the risk assessment process and the outcomes of risk assessments. Safety Representatives are entitled to access to risk assessment documents. This applies to risk assessments dealing with violent and abusive behaviours.

The Risk Assessment Process

There are 5 Steps to risk assessment as outlined in the HSE guidance. These steps apply equally to specific risk assessments on violence and abusive behaviours.

Step 1 is the identification of hazards. Violent and abusive behaviours which may cause injury are hazards. Such hazards can be identified by incident reports where violent or abusive behaviours have been reported and where there has been no injury or following a violent incident where injury has occurred. It is important to be pro-active with identifying this kind of hazard and if a teacher identifies violent and abusive behaviours she/he can request that a risk assessment is carried out. Following an incident a risk assessment should be carried out before the pupil is returned to class.

Step 2 requires identification of who might be harmed and how this may happen. In schools the employer must consider employees, pupils and employees of other employers, for example, catering or janitorial staff not directly employed by the

council. In this type of risk assessment it will also be important to identify the causes of and triggers for behaviours.

Step 3 evaluates the risks and decides on the precautions required. This is about looking at what is already in place and attempting to reduce risks to an acceptable level.

The manager must ensure that he/she has done all that is 'reasonably practicable' to reduce the risks. The term 'reasonably practicable' is used frequently in health and safety legislation and means that there must be an evaluation of the level of risk and the resources required to take additional measures to reduce the risk further. It does not mean that a manager can make a decision not to take additional precautions or preventative steps based only on financial cost. It is important that the process involves consultation with the staff who come into contact with the pupil to fully understand their views, observations and perceptions of the level of risk.

Step 4 requires the findings to be recorded and, most importantly, implemented. Good practice is for implementation to be allocated to individuals/departments and realistic time scales set. Such timescales will be dependent on the level of risk. There may be measures that need to be put in place before the pupil can return to school.

Step 5 is the review of the risk assessment. It will be essential to review any measures taken to reduce risk at an early stage, to assess the impact of the additional measures and to assess whether or not the risk is being adequately controlled. Following a review a decision should be made on a future review date. If there is a further violent incident the risk assessment should be reviewed. Where there is a behavioural risk assessment for a pupil and that pupil moves school the existing risk assessment must be reviewed in the light of the new setting.

Risk assessments should be carried out by an 'appropriate person', who is trained in the risk assessment process and has sufficient experience of the work and knowledge of health and safety requirements. With a risk assessment that is assessing the risks presented by behaviours it would be good practice to have an assessment led by a competent person and also involving experts and practitioners. This is a difficult risk assessment process and a multidisciplinary and consultative approach will assist in producing effective, appropriate and acceptable outcomes.

Risk assessments should be available to all staff at risk and Trade Union Safety Representatives and such staff should be informed of both the risks and the specific control measures required to reduce the risks.